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IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1992

GENE McNARY, COMMISSIONER, IMMIGRATION  
AND NATURALIZATION SERVICE, *et al.*,

*Petitioners,*

v.

HAITIAN CENTERS COUNCIL, INC., *et al.*,

*Respondents.*

ON WRIT OF *CERTIORARI* TO THE UNITED STATES  
COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF THE ASSOCIATION OF THE BAR OF  
THE CITY OF NEW YORK AS *AMICUS CURIAE*  
IN SUPPORT OF RESPONDENTS

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<i>de Casariego v. Uruguay</i> , Selected Decisions Under the Optional Protocol of the United Nations Rights Commission, U.N. Doc. CCPR/C/OP/1, 92 (1981) . . . . .	16

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<i>Ford v. United States</i> , 273 U.S. 593 (1927) . . . . .	24
<i>Haitian Centers Council, Inc. v. McNary</i> , 969 F.2d 1350 (2d Cir. 1992) . . . . .	15-16
<i>Haitian Refugee Center, Inc. v. Baker</i> , 949 F.2d 1109 (11th Cir. 1991), <i>cert. denied</i> , — U.S. —, 112 S.Ct. 1245 (1992) . . . . .	20
<i>In re Estate of Ferdinand E. Marcos Human Rights Litigation Agapita Trajano</i> , — F.2d —, 1992 U.S. App. LEXIS 26680 (9th Cir. October 21, 1992) . . . . .	8
<i>Japan Whaling Ass'n v. American Cetacean Society</i> , 478 U.S. 221 (1986) . . . . .	23
<i>Tel-Oren v. Libyan Arab Republic</i> , 726 F.2d 774 (D.C. Cir. 1984), <i>cert. denied</i> , 470 U.S. 1003 (1985) . . . . .	7
<i>United States v. Belmont</i> , 301 U.S. 324 (1937) . . . . .	23

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<i>United States Dept. of Defense v. Federal Labor Relations Authority</i> , 685 F.2d 641 (D.C. Cir. 1982) . . . . .	23
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American Convention on Human Rights, November 22, 1969, art. 22(8) . . . . .	17-18
Canadian Senate's Standing Committee on Legal and Constitutional Affairs, Report on Bill C-84, 2d Sess., 33d Parl., 1986-87 . . . . .	14-15

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Cartagena Declaration of Refugees, 1984-1985 Annual Report of the Inter- American Commission on Human Rights (OSEA/Ser. L/V/II.66/doc. 10, rev. 1) . . . . .	10
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Convention Against Torture and Other Cruel, Inhuman or Degrading Punishment, December 9, 1975, G.A. Res. 39/46, U.N. GAOR, Supp. No. 51, U.N. Doc. A/RES/39/708 . . . . .	6
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International Convention on the Suppression and Punishment of the Crime of <i>Apartheid</i> , November 30, 1973, 1015 U.N.T.S. 244 . . . . .	6-7
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Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102 (1980), 8 U.S.C. § 1243 . . . . .	21
Report of United Nations High Commissioner for Refugees, U.N. GAOR, Supp. No. 12, U.N. Doc A/40/12 (1985) . . . . .	10
Res. 67(14) on Asylum to Persons in Danger of Persecution, Committee of Ministers of the Council of Europe (June 29, 1967) . . . . .	17
Slavery Convention of 1926, September 25, 1926, 60 L.N.T.S. 253, 46 Stat. 2183, 2 Berans 607, T.S. 778 (1929) . . . . .	6

	Page(s)
Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, September 7, 1956, 266 U.N.T.S. 3, 18 U.S.T. 3201, T.I.A.S. No. 6418 . . . . .	6
United States Senate Concurrent Res. 26, 135 Cong. Rec. S. 6354 (June 7, 1989) . . . . .	18-19
United Nations Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150, 19 U.S.T. 6259 . . . . .	<i>passim</i>
United Nations Protocol Relating to the Status of Refugees, October 4, 1967, 606 U.N.T.S. 277, 19 U.S.T. 6223, T.I.A.S. 6577 . . . . .	<i>passim</i>
Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331, T.S. No. 58 (1980), 8 I.L.M. 679 (1979) <i>entered into force</i> January 27, 1980 . . . . .	8, 13
 <b>Miscellaneous</b>	
Bailey, <i>Current and Future Legal Uses of Direct Broadcast Satellites in International Law</i> , 45 La. L. Rev. 701 (1985) . . . . .	7

	Page(s)
<i>Baker Rejects Asian Criticism of U.S. Over Boat People</i> , Reuters, July 26, 1990 . . . . .	18
Bowett, <i>The Law of International Institutions</i> (4th ed. 1982) . . . . .	13
Carter and Trimble, <i>International Law</i> (1991) . . . . .	13
Crawford and Hyndman, <i>Three Heresies in the Application of the Refugee Convention</i> , vol. 1, no. 2 Int'l J. Refugee L. 155 (April 1989) . . . . .	16
DeWind and Kass, <i>Justice in El Salvador: A Report of a Mission of Inquiry</i> , 38 Record of the Association 112 (March 1983) . . . . .	2
2 Encyclopedia of the Holocaust 1412-13 (1990) . . . . .	20
Etzwiler, <i>The Treatment of Asylum Seekers at Ports of Entry and the Concept of "International Zones," in The Effects of Carrier Sanctions on the Asylum System</i> (pamphlet published by the Danish Refugee Council) (October 1991) . . . . .	16

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Foighel, <i>The Legal Status of the Boat People</i> , 48 <i>Nordisk Tidsskrift for International Ret</i> 233 (1979) . . . . .	17
Goodwin-Gill, <i>The Refugee in International Law</i> (1983) . . . . .	16
Hathaway, <i>Postscript—Selective Concern: An Overview of Refugee Law in Canada</i> , 34 McGill L.J. 354 (1989) . . . . .	15
Hellerstein, McKay and Schlam, <i>Criminal Justice and Human Rights in Northern Ireland</i> , 43 <i>Record of the Association</i> 110 (March 1988) . . . . .	2
Henkin, <i>Foreign Affairs and the Constitution</i> 194 (1972) . . . . .	23
Leh, <i>Remedying Foreign Repression Through U.S. Courts</i> , 20 N.Y.U.J. Int'l L. & Pol. 405 (1988) . . . . .	7
Misra, <i>The Implications of Interdiction at Sea</i> , <i>Refuge</i> 4 (March 1988) . . . . .	16
Morse, <i>While Six Million Died: A Chronicle of American Apathy</i> (1967) . . . . .	20
N.Y. Times, January 25, 1990, § 1 at 5 . . . . .	19

	Page(s)
Parker and Neylon, <i>Jus Cogens: Compelling the Law of Human Rights</i> , 12 <i>Hastings Int'l and Compl. L. Rev.</i> 411 (1989) . . . . .	9-10, 12
Refugee Reports, A Project of the American Council for Nationalities Service, vol. 9, no. 3 (March 18, 1988) . . . . .	18
<i>Restatement (Third) of the Foreign Relations Law of the United States</i> (1987) . . . . .	8, 13
Segal, <i>Restructuring Canada's Refugee Determination Process: A Look at Bills C-55 and C-84</i> , 29(3) <i>Les Cahiers de Droit</i> 733 . . . . .	15
Thomas and Witts, <i>Voyage of the Damned</i> (1974) . . . . .	20
Wash. Post, January 26, 1990, at A18 . . . . .	19
Zabel, Orentlicher and Nachman, <i>Human Rights and the Administration of Justice in Chile</i> , 42 <i>Record of the Association</i> 431 (May 1987) . . . . .	2

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**INTEREST OF *AMICUS CURIAE*<sup>1/</sup>**

*Amicus Curiae* The Association of the Bar of the City of New York (the "Association") has a great interest in the question presented in this case: whether the United States may summarily return Haitian aliens to Haiti, who have been

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<sup>1/</sup> The parties have consented to the filing of this brief. Letters of consent are on file with the Clerk of the Court, pursuant to Rule 37.3 of the Rules of this Court.

intercepted on the high seas, without making individualized determinations regarding the validity of their asylum claims as required by both international and domestic law.

The Association is a professional association of approximately 19,000 lawyers throughout the United States and in over forty other countries. Since its inception in 1870, the Association has been dedicated to the preservation and advancement of the rule of law and the fair administration of justice. The scope of the Association's concern with justice has not been limited to the confines of the City of New York but extends beyond local borders.

For many years, the Committee on International Human Rights has been a standing committee of the Association. A 1985 Resolution of the Association states that "the Association of the Bar of the City of New York affirms its support for the Rule of Law in the international community ..." In its efforts to promote the rule of law, the Association has issued reports on international agreements and pending United States legislation relating to international human rights; filed *amicus* briefs in relevant court cases; intervened on behalf of foreign lawyers and judges who have been persecuted or imprisoned for exercising their professional responsibilities; and sent delegations to investigate human rights conditions in countries throughout the world and published the reports of their findings.<sup>2/</sup>

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<sup>2/</sup> See, e.g., DeWind and Kass, *Justice in El Salvador: A Report of a Mission of Inquiry*, 38 Record of the Association 112 (March 1983); Zabel, Orentlicher and Nachman, *Human Rights and the Administration of Justice in Chile*, 42 Record of the Association 431 (May 1987); Hellerstein, McKay and Schlam, *Criminal Justice and Human Rights in Northern Ireland*, 43 Record of the Association 110 (March 1988).

This case is of vital importance to the Association. The Association respects and supports the universally accepted principle of *non-refoulement*, i.e., the prohibition against returning *bona fide* refugees against their will to their oppressors. This fundamental principle has long been embodied in customary international law as well as in multilateral treaties and bilateral agreements to which the United States is a party.

The end of the "Cold War" has not, unfortunately, resulted in a decrease in civil strife. On the contrary, long-seething animosities, formerly contained by the totalitarian regimes recently toppled throughout the world, have surfaced, resulting in floods of refugees all over the world. All civilized nations must meet the challenge of ensuring that the rights of innocent refugees are protected.

Yet, the universal prohibition against *non-refoulement* is meaningless unless refugees are provided an opportunity to present their case that they are, in fact, *bona fide* refugees, i.e., that they harbor a well-founded fear of persecution in their home countries. Accordingly, as an organization of lawyers concerned with the enforcement of international law and treaty obligations and with the principle of due process of law, the Association is especially troubled by the Government's argument that the United States can circumvent the duty of *non-refoulement* by intercepting Haitian refugees before they reach the territory of the United States and summarily returning them to Haiti without affording them the opportunity to establish their status as refugees entitled to asylum. The answer to the question of whether the United States can thus evade its international humanitarian obligations bears directly on the larger question of whether

the community of nations will abide by the principle of *non-refoulement* in this crucial juncture in the history of nations.

The Association, therefore, strongly supports the arguments made by the respondents and other *amici* that the United States may not summarily return Haitian refugees interdicted on the high seas. The Association, in fact, in a letter dated July 21, 1992, urged President Bush to reverse the United States' policy of returning Haitian refugees without a hearing on the ground that the policy violates international and domestic law. In this *amicus* brief, the Association demonstrates that the United States' duty of *non-refoulement* under international and domestic law is not limited to the territory of the United States; it imposes obligations on the United States wherever it acts.

## SUMMARY OF ARGUMENT

Petitioners assert that, by intercepting Haitian aliens on the high seas before they reach United States territorial waters, the duty of *non-refoulement* may be avoided. We respectfully submit that the United States is bound by the duty of *non-refoulement* wherever the Government may act, whether within the United States itself, in its territorial waters, on the high seas or on foreign soil. The prohibition against *refoulement* constitutes a *jus cogens* norm of international law, binding on all nations, in all places, and at all times (Point I *infra*). *Non-refoulement* is a universal duty: it has been recognized in the domestic laws of our sister nations, in international human rights agreements, and in statements of policy by United States officials (Point II *infra*). In fact, because the United States has also expressly assumed the duty of *non-refoulement* in an agreement with Haiti, the duty is part of United States domestic law (Point III *infra*).

## ARGUMENT

### I. THE UNIVERSAL DUTY OF *NON-REFOULEMENT* DOES NOT END AT A NATION'S BORDERS

The prohibition against returning a person to a potential oppressor—embodied in Article 33 of the “Refugee Convention”<sup>2/</sup>—is part of a larger and growing body of international human rights law which recognizes fundamental limitations upon the conduct of all nations in their dealings with individuals, whether citizens or aliens.

Prior developments in this law include (1) the ban on slavery, *see*, the Slavery Convention of 1926, 60 L.N.T.S. 253, 46 Stat. 2183, 2 Berans 607, T.S. 778 (1929), and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, September 7, 1956, 266 U.N.T.S. 3, 18 U.S.T. 3201, T.I.A.S. No. 6418, (2) the outlawing of genocide, *see*, the Convention on the Prevention and Punishment of the Crime of Genocide, 78 U.N.T.S. 277, (3) the prohibition against torture, *see*, the Convention Against Torture and Other Cruel, Inhuman or Degrading Punishment, December 9, 1975, G.A. Res. 39/46, U.N. GAOR, Supp. No. 51, at 197, U.N. Doc. A/RES/39/708 at 6, and (4) the condemnation of state-imposed racial discrimination or *apartheid*, *see*, the International Convention on the Elimination of All Forms of Racial Discrimination, 660 U.N.T.S. 195, and the International Convention on the Suppression and Punishment

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<sup>2/</sup> United Nations Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150, 19 U.S.T. 6259.

of the Crime of *Apartheid*, November 30, 1973, 1015 U.N.T.S. 244.

The underlying premise of these international conventions is that certain practices are so abhorrent that they may not be permitted anywhere in the world. *See, e.g., Filartiga v. Pena-Irala*, 630 F.2d 876, 878 (2d Cir. 1980) (“deliberate torture perpetrated under color of official authority violates universally accepted norms of the international law of human rights, regardless of the nationality of the parties”). No nation may engage in such practices, and an individual’s right to protection from them does not begin or end with the borders of any particular state. *See, Tel-Oren v. Libyan Arab Republic*, 726 F.2d 774, 781 (D.C. Cir. 1984), *cert. denied*, 470 U.S. 1003 (1985) (Edwards, J., concurring) (“commentators have begun to identify a handful of heinous actions — each of which violates definable, universal and obligatory norms”).

One commentator has stated the point thus:

Under international customary law, a country is not free to commit violations of human rights within *or without* its borders.

Leh, *Remedying Foreign Repression Through U.S. Courts*, 20 Int’l L. & Pol. 405, 458 (1988) (emphasis added). *See also*, Bailey, *Current and Future Legal Uses of Direct Broadcast Satellites in International Law*, 45 La. L. Rev. 701, 717 (1985) (“the protection of basic human rights *irrespective of national borders* has become customary international law”) (emphasis added).

At least two Courts of Appeals have recognized that basic human rights protections, in fact, constitute *jus cogens* or peremptory norms. See, *In re Estate of Ferdinand E. Marcos Human Rights Litigation Agapita Trajano*, — F.2d —, 1992 U.S. App. LEXIS 26680 (9th Cir. October 21, 1992) (torture is clear violation of *jus cogens* norm); *Committee of United States Citizens Living in Nicaragua v. Reagan*, 859 F.2d 929, 940 (D.C. Cir. 1988) (hereinafter “CUSCLIN”). A *jus cogens* norm “enjoy[s] the highest status within international law.” CUSCLIN, 859 F.2d at 940. Unlike an ordinary norm of customary international law, a *jus cogens* norm is a “norm from which no derogation is permitted.” Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331, T.S. No. 58 (1980), 8 I.L.M. 679 (1979), entered into force January 27, 1980, art. 53. See also, Restatement (Third) of the Foreign Relations Law of the United States (1987) (hereinafter “Restatement (Third)”), § 102, comment k (“some rules of international law are recognized by the international community of states as peremptory, permitting no derogation.”); § 102, comment j; § 331, comment e, Reporters’ Note 4 (discussing peremptory norms that are of superior status and which cannot be affected by treaty).

In CUSCLIN, the D.C. Circuit noted that the “fundamental human rights law that prohibits genocide, slavery, murder, torture, prolonged arbitrary detention, and racial discrimination” constituted one of the few categories of norms that “arguably do meet the stringent criteria for *jus cogens*.” 859 F.2d at 941. Accord, Restatement (Third), § 702. The Court of Appeals further stated that:

Such basic norms of international law as the proscription against murder and slavery

may well have the domestic legal effect that appellants suggest. That is, *they may well restrain our government in the same way that the Constitution restrains it*. If Congress adopted a foreign policy that resulted in the enslavement of our citizens or of other individuals, that policy might well be subject to challenge in domestic court under international law.

*Id.*

That certain fundamental norms, such as *jus cogens* norms, transcend the consent of states was articulated during the Nuremberg trials following World War II. The international tribunal formed by the United States and other Allied nations found that certain “crimes against humanity,” including murder, deportation or other persecution based on political or racial grounds, could be punished under international law “whether or not in violation of the domestic law of the country where perpetrated.” See, Charter of the International Military Tribunal, August 8, 1945, 59 Stat. 1546, 82 U.N.T.S. 279. Similarly, the International Court of Justice, in *The Barcelona Traction, Light & Power Co. (Belgium v. Spain)*, 1970 I.C.J. 3, 32, held that “the basic rights of the human person” are so important that they represent obligations of the states towards the international community as a whole.

The right of *non-refoulement* has become one of the human rights norms recognized as *jus cogens*:

The principle of *non-refoulement*, usually referred to only in its refugee law application,

is also part of human rights law and humanitarian law, and is acknowledged as a *jus cogens* norm. The *jus cogens* nature of the right of *non-refoulement* is especially apparent because the later [sic] doctrine imposes obligations on states not involved in the acts that lead to the flight of the victim ... However, in all its applications, the right of *non-refoulement*, like all *jus cogens* norms, exists outside of treaties, and is non-derogable, binding and judicially enforceable.

Parker and Neylon, *Jus Cogens: Compelling the Law of Human Rights*, 12 Hastings Int'l and Compl. L. Rev. 411, 435-36 (1989) (footnotes omitted). See also, Report of United Nations High Commissioner for Refugees, 40 U.N. GAOR, Supp. No. 12 at 6, U.N. Doc. A/40/12 (1985) ("Due to its repeated reaffirmation at the universal, regional and national levels, the principle of *non-refoulement* has now come to be characterized as a peremptory norm of international law."); Cartagena Declaration on Refugees, 1984-1985 Annual Report of the Inter-American Commission on Human Rights, at 177-182 (OEA/Ser. L/V/II.66/doc. 10, rev. 1), conclusion 5 (*Non-refoulement* is "a cornerstone of the international protection of refugees. This operative principle concerning refugees should be recognized in the present state of international law, as a principle of *jus cogens*.")

Significantly, the Refugee Convention originally *did* contain an optional geographic (and temporal) limitation, restricting application of the convention to persons made refugees because of "events occurring in Europe before 1 January 1951." See, the Refugee Convention, Art. I, Section B(1)(a). To suggest that the United States' duty of *non-*

*refoulement* is somehow geographically limited, petitioners disingenuously cite various portions of the original Refugee Convention reflecting that option.<sup>4/</sup> The United States, however, was not a party to the original Refugee Convention, and needless to say, never exercised the option to limit its scope. In fact, the option to restrict the Refugee Convention's application to Europe was—as far as the United States and other new parties were concerned—*eliminated* in the 1967 United Nations Protocol Relating to the Status of Refugees (hereinafter the "1967 Protocol"). See, the 1967 Protocol, October 4, 1967, 606 U.N.T.S. 277, 19 U.S.T. 6223, T.I.A.S. 6577, Art. I(3) ("The present Protocol shall be applied by the States Parties hereto *without any geographic limitation*, save that *existing* declarations made by States *already* Parties to the Convention in accordance with article 1B(1)(a) of the Convention, shall, unless extended under article 1B(2) thereof, apply also under the present Protocol") (emphasis added).<sup>5/</sup> In any event, the United States acceded

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<sup>4/</sup> See, e.g., Brief for the Petitioners at 41.

<sup>5/</sup> Petitioners assert that Article 40 of the original Refugee Convention, rather than Article I(B)(1)(a), controls the issue of territorial application and that Article 40 was left unchanged by the 1967 Protocol (see, Art. 7.4 thereof). However, Article 40 only permits (indeed encourages) a state to *extend* the obligations of the Refugee Convention to "all or any of the territories for the international relations of which [the state] is responsible" (Art. 40(1)). Article 40 does *not* provide that the state may limit its own duties under the Refugee Convention. Thus, while Article 40 would allow the United States to bind, for example, Puerto Rico, to the convention, it does not permit the United States to absolve itself of responsibility for its actions merely because they may have occurred outside the United States itself. For further discussion of the petitioners' mistaken reliance on Article 40, see generally, the Brief of *Amicus Curiae* United Nations High Commissioner for Refugees in Support of Respondents, Point II(D).

to the 1967 Protocol with only two reservations, *neither of which objected to the unlimited geographic scope of the duty of non-refoulement in light of the 1967 Protocol*. See, Presidential Proclamation (Lyndon B. Johnson), 19 U.S.T. 6257-58 (November 6, 1968).

In sum, the petitioners are gravely mistaken when they seek a geographic limitation to the ban against *refoulement*.<sup>6/</sup> As a *jus cogens* norm, the prohibition is of universal application, applying to every nation wherever it may act. See, e.g., Parker and Neylon, 12 Hastings Int'l and Compl. L. Rev. at 455 ("*jus cogens* obligations transcend national boundaries").

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<sup>6/</sup> The petitioners' position is particularly perverse in that it revives the long-discredited view that a person's human rights depend upon geography. It was, after all, the belief of the nineteenth-century southern slave owners that the right to freedom suddenly vanished south of the Mason-Dixon line. Moreover, the petitioners' interdiction program bears a disturbing similarity to the practices of that era. Then, too, the federal government returned oppressed men and women to their persecutors. See, *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393, 60 S.Ct. 691 (1857) (Campbell, J., concurring) ("The Federal Constitution [the fugitive slave clause] and the Acts of Congress [the fugitive slave laws] provide for the return of escaping slaves within the limits of the Union").

## II. STATE PRACTICE CONDEMNS REFOULEMENT WHEREVER IT OCCURS

In determining the scope of Article 33(1)'s application, full account must also be taken of state practice since the Refugee Convention went into effect. Article 31(1) of the Vienna Convention on the Law of Treaties provides:

(1) A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose ...

(3) There shall be taken into account, together with the context ... (b) any *subsequent practice* in the application of the treaty which establishes the agreement of the parties regarding its interpretation ...

(emphasis added). The "practice of states" may be gleaned from several sources including (1) domestic statutes; (2) judicial opinions and administrative decisions of the various nations; (3) subsequent regional or international instruments through which states participate in further specifying, clarifying, pronouncing or developing shared norms to which they assent; and (4) official statements of policy. See, Restatement (Third), § 102, comment b; Carter and Trimble, *International Law* 113-114 (1991); see generally, Bowett, *The Law of International Institutions* (4th ed. 1982).

**A. The Domestic Laws Of Other Nations  
Recognize The Duty Of Non-Refoulement  
Without Regard to National Borders**

Many nations have incorporated Article 33(1)'s prohibition against *refoulement* of political asylum seekers into domestic statutory provisions which expressly provide or indicate that the norm applies regardless of whether a refugee has entered national territory. *See*, Appendix (Belize, Bolivia, Burundi, Canada, the Dominican Republic, Ecuador, Finland, Lesotho, Malawi, Nicaragua, Nigeria, Peru, Spain, Sweden, Switzerland, and Zimbabwe).

Tellingly, the recently-enacted Canadian refugee law permits the Minister of Immigration to interdict ships *outside* Canada's territorial waters, in a contiguous zone, but only once "all passengers who seek Convention refugee status and are nationals or citizens of the country where the vehicle embarked them have been *removed* from the vehicle and brought into Canada." An Act to Amend the Canadian Immigration Act, 1976 and the Canadian Criminal Code in Consequence Thereof, S.C. 1988, ch. 36 clause 8, § 91.1(1.1)(b) (Appendix, ¶ 4). An earlier version of the Canadian legislation, which would have permitted the Minister to interdict and turn away ships at sea without inquiring into the passengers' claims of refugee status, was criticized and ultimately rejected by the Canadians as an evasion of the duty of *non-refoulement*:

The Committee has ... concluded that ships should not be turned around at sea but should be brought to port ... The only appropriate treatment for passengers who claim to be refugees is speedy and just processing

according to the laws which apply to all refugee claimants, whether they arrive by air, land or sea.

Canadian Senate's Standing Committee on Legal and Constitutional Affairs, Report on Bill C-84, 2d Sess., 33d Parl., 1986-87, ¶ 47, *reprinted in* Hathaway, *Postscript—Selective Concern: An Overview of Refugee Law in Canada*, 34 McGill L.J. 354, 355 n.2 (1989). *See also*, Segal, *Restructuring Canada's Refugee Determination Process: A Look at Bills C-55 and C-84*, 29(3) *Les Cahiers de Droit* 733, 758, 735.

A recent administrative decision of the Netherlands demonstrates that a state is bound by its Article 33 obligations even in the territory of another state. In rejecting an application for political asylum made at the Dutch embassy in Kuwait (on a ground permitted by the Refugee Convention),<sup>27</sup> the Netherlands acknowledged that it was bound by the obligations of the Refugee Convention even on foreign soil, namely, at its overseas embassy in Kuwait. *See*, Letter from the Dutch Minister of Foreign Affairs, July 8, 1992, no. 9110.15.0232 (regarding asylum claim of Weshah Abdelhadi Weshah Gadallah).

The actions of the above nations collectively establish a state practice consistent with the Second Circuit's findings that "what is important under Article 33.1 is where the refugee is to be returned *to* ... without regard to where the refugee is to be returned *from*[,] and that "Article 33.1's

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<sup>27</sup> The asylum applicant was eligible, as a Palestinian in the Middle East, for assistance and protection from a United Nations agency. *See*, the Refugee Convention, art. 1(D).

prohibition against 'return' plainly applies to *all* refugees, regardless of location." *Haitian Centers Council, Inc. v. McNary*, 969 F.2d 1350 (2d Cir. 1992) (emphasis in original). See also, *de Casariego v. Uruguay*, Selected Decisions Under the Optional Protocol of the United Nations Human Rights Commission, U.N. Doc. CCPR/C/OP/1, 92, 94 (1981), ¶ 10.2 (in case involving claimant who was forcibly abducted in Brazil by Uruguayan agents, United Nations Human Rights Committee held that Article 1 of Optional Protocol to the International Covenant on Civil and Political Rights—providing "individuals subject to its jurisdiction"—refers "not to the place where the violation occurred, but rather to the relationship between the individual and the State in relation to a violation of any of the rights set forth in the Covenant, wherever they occurred.") quoted in, Etzwiler, *The Treatment of Asylum Seekers at Ports of Entry and the Concept of "International Zones,"* in *The Effects of Carrier Sanctions on the Asylum System* (pamphlet published by the Danish Refugee Council) (October 1991) at 19.<sup>8/</sup>

A nation's duty of *non-refoulement* does not stop at its borders, because international human rights obligations "are coextensive with States' exercise of authority and jurisdiction, and not solely with the geographic land mass that States acknowledge as their 'territory.'" Etzwiler, at 19. Moreover,

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<sup>8/</sup> Geography is irrelevant because, "in scrupulously observing *non-refoulement*, the state [is] acting on behalf of the international community." Goodwin-Gill, *The Refugee in International Law* 119 n.81 (1983). See also, Crawford and Hyndman, *Three Heresies in the Application of the Refugee Convention*, vol. 1, no. 2 Int'l J. Refugee L. 155, 171 (April 1989) ("The obligation of *non-refoulement* is an obligation to or in respect of the individual refugee, or alternatively to the international community as a whole.").

when a state reaches out and exercises its authority and jurisdiction on the high seas, "international law and the laws of a flag-state (the state whose nationality a ship carries) apply." Misra, *The Implications of Interdiction at Sea*, Refuge 4 (March 1988). Thus, United States Coast Guard cutters necessarily carry with them, wherever they may go, the international and domestic human rights obligations of the United States. See, Foighel, *The Legal Status of the Boat People*, 48 *Nordisk Tidsskrift for International Ret* 233 (1979) ("the state of the flag cannot evade its liability for the persons rescued, where a rescue operation has resulted in refugees coming under the custody of the vessel").

#### B. Regional Blocs Of Nations Have Incorporated The Duty Of *Non-Refoulement* Into Multilateral Instruments

At least three regional multilateral instruments have incorporated the principle of *non-refoulement*, demonstrating that the duty transcends *national* borders. In 1967, the Committee of Ministers of the Council of Europe recognized the obligation of *non-refoulement* as follows:

[Member states should] ensure that no one shall be subjected to refusal of admission at the frontier, rejection, expulsion *or any other measure* which would have the result of compelling him to return to, or remain in, territory where he would be in danger of persecution[.]

Res. (67)14 on Asylum to Persons in Danger of Persecution (June 29, 1967) (emphasis added). Similarly, in 1969, the duty of *non-refoulement* was adopted by the Organization of

American States, *see*, the American Convention on Human Rights, November 22, 1969, art. 22(8), and by the Organization of African Unity, *see*, Convention on Refugee Problems in Africa, September 10, 1969, art. II(3).

### C. *Refoulement* Has Been Condemned By The United States Itself

Significantly, *refoulement* by other nations has been routinely condemned by the United States in official statements of policy. For example, in criticizing the "push-backs" of Vietnamese boat people into the sea by Asian nations, Secretary of State James Baker said: "It is no secret we do not support involuntary repatriation." *Baker Rejects Asian Criticism of U.S. Over Boat People*, Reuters, July 26, 1990. In 1988, the U.S. Ambassador to Thailand, William A. Brown, sent a letter to that nation's foreign minister calling for an end to push-backs of Laotian refugees. Refugee Reports, A Project of the American Council for Nationalities Service, vol. 9, no. 3 (March 18, 1988). The following year, the Senate passed Concurrent Resolution 26 urging first asylum countries of the Association of Southeast Asian Nations to reinstate the practice of providing refuge to all asylum seekers and pointing out that "given Vietnamese attitudes toward illegal departure, *forced repatriation of refugees to Vietnam should not be considered a viable*

*option.*" 135 Cong. Rec. S. 6354 (June 7, 1989) (emphasis added).

In 1990, the Bush administration actually led the international community in denouncing Great Britain's policy of forcibly returning Vietnamese refugees who had fled to Hong Kong. Condemning involuntary repatriation "in principle and in practice," the United States called for a one-year moratorium on repatriation and "full international monitoring of the process leading to any mandatory return." N.Y. Times, January 25, 1990, § 1 at 5. This strong stand was taken by the United States even though the British policy, unlike the current United States policy toward Haitians, required that all Vietnamese refugees be interviewed to determine the substance of their claims. Only those determined to be economic migrants, as opposed to political asylees, were repatriated by the British. *See*, Wash. Post, January 26, 1990, at A18.

It should be noted that many of the push-backs of Vietnamese refugees did not actually result in *refoulement*, because the asylum-seekers were not pushed all the way back to the country where they faced political persecution. These push-backs thus did not flagrantly violate Article 33(1) in the way the Haitian interdiction program does, but were nonetheless condemned by the United States.

In short, the duty of *non-refoulement* is not only a universally recognized obligation, it is a duty which the United States has repeatedly demanded that other nations observe. The United States must demand no less of itself. Indeed, in light of this nation's shameful decision to turn away Jewish refugees aboard the St. Louis and other ships

fleeing from Nazi Germany during World War II,<sup>2/</sup> the United States must fully discharge its duty towards the Haitians to avoid further dishonor. As Judge Hatchett has pointedly noted:

The United Nations Protocol on Refugees, and the United States immigration laws which execute it, were motivated by the World War II refugee experience. Jewish refugees seeking to escape the horror of Nazi Germany sat on ships in New York Harbor, only to be rebuffed and returned to Nazi Germany gas chambers. Does anyone seriously contend that the United States' responsibility for the consequences of its inaction would have been any less if the United States had stopped the refugee ships *before* they reached our territorial waters? Having promised the international community of nations that it would not turn back refugees at the border, the government yet contends that it may go out into international waters and actively prevent Haitian refugees from reaching the border. Such a contention makes a sham of our international treaty obligations and domestic laws for the protection of refugees.

*Haitian Refugee Center, Inc. v. Baker*, 949 F.2d 1109, 1112 (11th Cir. 1991), *cert. denied*, — U.S. —, 112 S.Ct. 1245 (1992) (Hatchett, J., dissenting) (emphasis in original).

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<sup>2/</sup> See, 2 Encyclopedia of the Holocaust 1412-13 (1990); Thomas and Witts, *Voyage of the Damned* (1974); Morse, *While Six Million Died: A Chronicle of American Apathy* (1967), ch. XV.

### III. THE UNITED STATES INCORPORATED THE DUTY OF *NON-REFOULEMENT* INTO U.S. DOMESTIC LAW BY ENTERING INTO THE 1981 U.S.-HAITI AGREEMENT

The United States is also obligated to abide by the principle of *non-refoulement* by its own domestic law—the Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102, 8 U.S.C. § 1243 (1980) *see*, Brief of Respondents, and the provisions of the bilateral executive agreement signed with the Government of Haiti; *see*, the Agreement Effectuated by Exchange of Notes, signed at Port-au-Prince, September 23, 1981, T.I.A.S. No. 10,241, 33 U.S.T. 3559 (“1981 U.S.-Haiti Agreement”).<sup>10/</sup>

The 1981 U.S.-Haiti Agreement is a bilateral application of the principal of *non-refoulement*. That Agreement authorized the United States to return “detained vessels and persons to a Haitian port” but expressly acknowledged that, even on the high seas, the United States was bound by “international obligations mandated in the Protocol Relating to the Status of Refugees.” The 1981 U.S.-Haiti Agreement states as follows:

Having regard to ... the international obligations mandated in the Protocol Relating to the Status of Refugees ... the United States

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<sup>10/</sup> The Second Circuit did not reach or decide the issue of whether the Kennebunkport Order is invalid under the 1981 U.S.-Haiti Agreement. This Court has repeatedly held that respondents are “entitled under our precedents to urge any grounds which would lend support to the judgment below.” *Dayton Bd. of Educ. v. Brinkman*, 433 U.S. 406, 419 (1977). *See also*, *Blum v. Bacon*, 457 U.S. 132, 137 n.5 (1982).

Government confirms with the Government of the Republic of Haiti its understanding of the following points ...

It is understood that under these arrangements the United States Government does not intend to return to Haiti any Haitian migrants whom the United States authorities determine to qualify for refugee status.

1981 U.S.-Haiti Agreement, at 1-2.

As explained above, the Refugee Convention unconditionally prohibits the return of a refugee "in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion." *See*, the Refugee Convention, as amended by the 1967 Protocol, Art. 33.

The United States explicitly acknowledged its binding obligation not to return any refugees interdicted on the high seas to the country from which he flees persecution under Executive Order No. 12,324, 50 Fed. Reg. 48,109 (September 29, 1981), *reprinted in* 8 U.S.C. § 1182. The Order's key provisions were Section 2(c)(3), which required "that no person who is a refugee will be returned [to Haiti by the Coast Guard] without his consent," and Section 3, which mandated that:

The Attorney General shall, in consultation with the Secretary of State and the Secretary of the Department in which the Coast Guard is operating, take whatever steps are necessary to ensure the fair enforcement of

our laws relating to immigration ... and the *strict observance of our international obligations concerning those who genuinely flee persecution in their homeland.* (Emphasis added).

Only one month earlier, the Justice Department's own legal counsel had examined the legality of the proposed interdiction program to determine whether the INS plan "comports with the Protocol." The opinion concluded that, when interdicting Haitians on the high seas, the United States was obliged under Article 33 to ensure the "[i]ndividuals who claim that they will be persecuted ... *must be given an opportunity to substantiate their claims.*" *Proposed Interdiction of Haitian Flag Vessels*, 5 Op. Off. Legal Counsel 242, 248 (1981) (emphasis added).

As an executive agreement authorized by law, the 1981 U.S.-Haiti Agreement has the force of a treaty and is enforceable in U.S. courts as domestic law. *United States Dept. of Defense v. Federal Labor Relations Authority*, 685 F.2d 641, 648 (D.C. Cir. 1982); *United States v. Belmont*, 301 U.S. 324, 331 (1937); Henkin, *Foreign Affairs and the Constitution* (1972), at 184-87; *see also*, *B. Altman & Co. v. United States*, 224 U.S. 583, 601 (1912). Moreover, it is beyond question that executive agency actions have long been subject to judicial review on the merits for their conformity with executive agreements. *Air Canada v. United States Dept. of Transp.*, 843 F.2d 1483 (D.D.C. 1988) (reviewing agency action for consistency with United States-Canada executive agreement); *see also*, *Japan Whaling Ass'n v. American Cetacean Society*, 478 U.S. 221, 230 (1986) (reviewing executive order for conformity with treaty); *British Caledonian Airways, Ltd. v. Bond*, 665 F.2d 1153, 1161-62 (D.C. Cir. 1981) (determining "whether FAA administrator

acted consistently with and followed the procedures mandated by the various international agreements" is a question requiring legal inquiry making judicial review appropriate).

It is also clear that, as individuals directly benefited by the *non-refoulement* provisions of the 1981 U.S.-Haiti Agreement, the Haitian refugees affected by the Kennebunkport Order have standing to bring an action to enforce the provisions of that Agreement. Where a treaty protects a particular class of persons who claim injury (in this case, Haitians interdicted by the United States on the high seas), those persons should have standing to enforce the treaty. *See, Valley Forge Christian College v. Americans United For Separation of Church and State*, 454 U.S. 464, 475 (1982); *see also, Cook v. United States*, 288 U.S. 102 (1933) (individuals have standing to raise violations of extradition treaties); *Ford v. United States*, 273 U.S. 593 (1927); *United States v. Rauscher*, 119 U.S. 407 (1886).

Therefore, the international duty of *non-refoulement* is also an obligation of United States domestic law, which may be raised by the victims of the unlawful Haitian interdiction program.

## CONCLUSION

For the foregoing reasons, the decision of the Court of Appeals should be affirmed.

Respectfully submitted,

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## APPENDIX

**Domestic Statutory Provisions of Various  
Nations Demonstrating *Non-Refoulement*  
Extends Beyond National Frontiers<sup>2/</sup>**

1. In Belize, the Refugees Act of August 24, 1991, Article 14(1) (emphasis added), provides:

Notwithstanding the provisions of any other law, no person shall be refused entry into Belize, expelled, extradited or returned from Belize to any other country or *be subjected to any similar measure* if, as a result of such refusal, expulsion, return or other measure, such person is compelled to return to or remain in a country where (a) he may be subjected to persecution ...; or (b) his life, physical integrity or liberty would be threatened ...

2. In Bolivia, *Decreto Presidencial No. 19640, Artículo 5 [4 junio, 1983]*, provides:

*La declaración de refugiado concede al extranjero la protección dispensada por el Estado que consiste en la no devolución al país, sea o no de origen, donde su derecho a la vida o a la libertad personal esté en riesgo de violación a causa de los motivos señalados en los artículos 1 y 2, en virtud del principio establecido en el artículo 33 de la Convención de 1951 sobre el Estatuto de los Refugiados y en el artículo 22, inciso 8, de Convención Americana de los Derechos Humanos y [...] de con lo estipulado en la Constitución Política del Estado, Título Primero "Derechos y deberes fundamentales de la*

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<sup>2/</sup> The text of the foreign language statutes which appear in this Appendix in English translation only (Finland and Sweden) were obtained from the REFLEG database of the United Nations High Commissioner for Refugees.

*Persona” y Título Segundo “Garantías de la Persona”.*

(The declaration of refugees gives all aliens the protection ... that consists of no-return to a country, whether or not of origin, where her right to life or personal liberty is at risk of violation caused by one of the reasons indicated in articles 1 and 2, by virtue of the principle established in article 33 of the 1951 Convention relating to the Status of Refugees and in article 22, part 8, of the American Convention of Human Rights and [...] the stipulation in the Political Constitution of the State, Title 1 “Rights and Fundamental Personal Obligations” and Title 2 “Personal Guarantees”.)

3. In Burundi, *Decret-Loi No. 1/23 Du 9 Juillet 1982 Portant Reglementation de L'Acces Au Burundi, Du Sejour, De L'Etablissement Et De L'Eloignement Des Etrangers, Titre II: Les Refugies - Chapitre 2: Non-Refoulement Des Refugies, Article 32*, provides:

*En aucun cas, l'étranger reconnu comme réfugié ne peut être renvoyé dans un pays où son retour est exclu en vertu de l'application du principe de non-refoulement.*

(In each case, an alien recognized as refugee cannot be returned to a country where her return is prohibited by virtue of the application of the principle of *non-refoulement*.)

4. In Canada, An Act to Amend the Immigration Act, 1976 and the Criminal Code in Consequence Thereof, S.C. 1988,

ch. 36, § 8(1) [adding § 91.1(1.1) to the Immigration Act, 1976, S.C. 1976-77, ch. 52] (emphasis added), provides:

91.1(1) Subject to subsection (1.1), where the Minister believes on reasonable grounds that a vehicle within twelve nautical miles of the outer limit of the territorial sea of Canada is bringing any person into Canada in contravention of this Act or the regulations, the Minister may direct the vehicle not to enter the internal waters of Canada or the territorial sea of Canada ...

(1.1) The Minister may make a direction under subsection (1) where the Minister is satisfied that

(a) the vehicle can return to its port of embarkation without endangering the lives of its passengers;

(b) *all passengers who seek Convention refugee status and are nationals or citizens of the country where the vehicle embarked them have been removed from the vehicle and brought into Canada;*

(c) the country where the vehicle embarked its passengers is a signatory to the Convention and complies with Article 33 thereof; and

(d) the country would allow the passengers to return to that country or to have the merits of their claims to Convention refugee status determined therein.

5. In the Dominican Republic, *Decreto Presidencial No. 2330 de 10 setiembre de 1984, Reglamento de la Comision Nacional Para Los Refugiados, Capitulo IV, Artículo, 13*, provides:

*Ningún refugiado podrá ser puesto en las fronteras, por expulsión o devolución, de territorios donde su vida o su libertad peligre por causa de raza, religión, nacionalidad, pertenencia a determinado grupo social o de su opiniones políticas.*

(No refugee can be placed in the borders, by expulsion or return, of the territory where her life or liberty is endangered because of race, religion, nationality, membership in a particular social group or political opinions.)

6. In Ecuador, Decreto No. 3293; Reglamento para la aplicación en el Ecuador de las normas contenidas en la Convención de 1951 sobre el estatuto de los refugiados y en su protocolo de 1967, Capítulo IV, Artículo 18 [30 septiembre 1987] (emphasis added), provides:

*Ninguna persona será rechazada en la frontera, devuelta, expulsada, o sujeta a medida alguna que le obligue a retornar a un territorio donde su integridad física o su libertad personal está en riesgo a causa de las razones mencionadas en los Artículos 1 y 2 presente Reglamento.*

(No one shall be refused at the border, returned, expelled *or subjected to any measure* which would obligate her to return to a territory where her physical integrity or personal liberty is at risk for any of the reasons mentioned in Articles 1 and 2 of this law.)

7. In Finland, the Aliens Act of March 1, 1991, Section VI - Refusal of Entry Into Finland and Removal from Finland, Article 38, provides:

Procedure for Refusal of Entry Into Finland at a Frontier. Refusal of entry is to be effected without delay at a passport control station or elsewhere as soon as it has been ascertained that an alien is not entitled to enter Finland. No one should be returned to an area where he may be subjected to inhuman treatment, or persecution under the terms of Article 30, or to an area from which he may be further sent to such an area.

8. In Lesotho, the Refugee Act of 1983, Article 11 (emphasis added):

A person shall not be rejected at any Lesotho frontier or be expelled *or otherwise compelled to return* or to remain in a country . . . where he may be tried or punished for offences of a political character[.]

9. In Malawi, the Refugee Act of May 8, 1989, Article 10(2), provides:

(1) A refugee shall not be expelled or returned to the borders of a country where his life or freedom will be threatened on account of (a) his race, religion, nationality or membership of a particular social group or political opinion; or (b) external aggression, occupation, foreign domination or events seriously disturbing the public order in either part or the whole of that country.

(2) A person claiming to be a refugee shall be permitted to enter and remain in Malawi for such period as the Committee may require to process his application for refugee status.

10. In Nicaragua, *Reglamento de Ley Creadora de la Oficina Nacional para refugiados, Artículo 16* [6 abril 1984], provides:

*Al margen de la determinación de la solicitud de la condición de refugiado, prevalecerá el principio de no devolución al territorio en el cual pueda peligrar su vida o libertad del individuo.*

(At the point of determining a claim of the condition of a refugee, will prevail the principle of no-return to a territory in which one's life or individual liberty is endangered.)

11. In Nigeria, the National Commission for Refugees, etc., Decree 1989, Part I, Article 1(1) [December 29, 1989] (emphasis added), provides:

As from the commencement of this Decree and notwithstanding any other law or enactment, no person who is a refugee within the meaning of this Decree shall be refused entry into Nigeria, expelled, extradited or returned *in any matter whatsoever* to the frontiers of any territory where (a) his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular group or political opinion; or (b) his life, physical integrity, or liberty could be threatened on account of external aggression, occupation, foreign domination or events seriously disrupting public order in any part of the whole of that territory.

12. In Peru, *Decreto Presidencial No. 1 Aprobando el Reglamento que Ordene La Situación Jurídica de los*

*Refugiados y Asilados Politicos en El Peru, Capitulo III, Artículo 54* [25 enero, 1985], provides:

*[E]l Ministerio del Interior evitará la devolución del extranjero al país en que su vida, libertad o integridad personal se encuentran seriamente amenazadas por las causales a que se refiere el artículo 7 del presente Reglamento.*

(The Minister of the Interior will avoid returning the alien to a country where her life, liberty or personal integrity would be seriously threatened by causes referred to in article 7 of this law.)

13. In Spain, *Ley 5/1984, de 28 de marzo, reguladora del derecho de asilo y de la condición de refugiado, Título primero: del Asilo; Capítulo 1: Disposiciones generales, Artículo 2*, provides:

*El asilo es la protección graciable dispensada por el Estado, en el ejercicio de su soberanía, a los extranjeros que se encuentren en alguna de las circunstancias previstas en el artículo 3 y que consiste en la no devolución al Estado donde sean perseguidos ...*

(Asylum is the protection graciously given by the state, in the exercise of its sovereignty, to aliens who find themselves in any of the circumstances anticipated in article 3 and which consist of a no-return to a state where she would be persecuted ...)

14. In Sweden, the Aliens Act of July 1, 1990, Article 2, provides:

When a refusal of entry order or an expulsion order is to be put into effect, the alien may not be sent to a country where he risks persecution, nor to a country where he is not safeguarded against being sent on to a country where he risks such persecution.

15. In Switzerland, *loi sur l'asile* (law on asylum), du 5 octobre 1979, article 45(1) (emphasis added), provides:

*Principe de non-refoulement, (1) Aucune personne ne peut être contrainte, de quelque manière que ce soit, à se rendre dans un pays où sa vie, son intégrité corporelle ou sa liberté serait menacée par l'un des motifs mentionnés à l'article 3, 1er alinéa, ou encore d'où elle risquerait d'être astreinte à se rendre dans un tel pays.*

(Principle of *non-refoulement*. (1) No one shall be constrained, in any manner whatsoever, to be returned to a country where her life, bodily integrity or liberty would be threatened for any of the reasons mentioned in article 3, clause 1, or also [to a third country where] she would risk being constrained to be returned to such a country.)

16. In Zimbabwe, the Refugee Act of 1983, Article 13(1) (emphasis added), provides:

Notwithstanding the provisions of any other law, no person shall be refused entry into Zimbabwe, expelled, extradited or returned from Zimbabwe to any other country or *be subjected to any similar measure*, if as a result of such refusal, expulsion, return or other measure such person is compelled to return to or remain in a country where (a) he may be

subjected to persecution on account of his race, religion, nationality, membership of a particular social group or political opinion; or (b) his life, physical integrity or liberty would be threatened on account of external aggression, occupation, foreign domination or events seriously disrupting public order in part or the whole of that country.